

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2024] NZERA 62
3200499

BETWEEN	WAIROA DISTRICT COUNCIL Applicant
AND	SIMON MUTONHORI Respondent

Member of Authority: Natasha Szeto

Representatives: Charles McGuinness, counsel for the Applicant
Respondent in person

Investigation Meeting: On the papers

Submissions Received: 9 November 2023 from the Applicant
Nil from the Respondent by 23 November 2023

Date of Determination: 5 February 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] On 26 October 2023, I issued a determination in which I concluded Mr Muttonhori did not comply with clauses 29.1 and 45.1 of his employment agreement. I granted the Council the orders it sought, requiring Mr Muttonhori to permanently delete or destroy Wairoa District Council's documentation in his possession.¹

[2] In that determination, the parties were encouraged to resolve any issue of costs between them, and the Authority referred to its usual practice of applying the daily tariff to determine costs.

[3] Mr Muttonhori did not respond to the Council's letter seeking costs in October 2023. Wairoa District Council then lodged a Memorandum regarding Costs with the

¹ *Wairoa District Council v Muttonhori* [2023] NZERA 632.

Authority on 9 November 2023. The Council seeks a contribution towards its costs of \$4,500 being the daily tariff for a one-day investigation meeting. Mr Mutonhori was given 14 days to respond to the Council's Memorandum, and did not do so despite the Authority sending notice that the timeframe for response had passed.

Analysis

[4] Costs are at the discretion of the Authority.² The Authority has adopted a daily tariff approach as the starting point for considering costs which is now well known. The current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.³

[5] The parties can expect the Authority to adhere to the approach of applying the daily tariff, unless there is good reason to depart from it.

[6] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*⁴ as confirmed in *Fagotti v Acme and Co Limited*⁵. It is a principle set out in *Da Cruz* that costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct. The financial situation of the party paying costs can be a relevant factor to take into account. Awards made should be modest, and consistent with the Authority's equity and good conscience jurisdiction.

[7] As the successful party, Wairoa District Council is entitled to a contribution to its costs actually and reasonably incurred.

[8] I adopt the daily tariff for a one-day investigation meeting of \$4,500 as being the appropriate starting point for assessing costs.

[9] My records show the investigation meeting took half a day. All parties were permitted to attend via audio-visual link (AVL) which no doubt reduced costs. In the circumstances I know of no reason to depart from applying the daily tariff, pro-rated to a half day investigation meeting.

² *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622.

³ Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi at: <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>.govt.nz

⁴ [2005] 1 ERNZ 808.

⁵ [2015] NZEmpC 135 at 114.

Orders

[10] For the reasons set out above, I order Simon Mutohori to pay Wairoa District Council within 28 days of the date of this determination:

- a. The sum of \$2,250 as a contribution to its costs.

Natasha Szeto
Member of the Employment Relations Authority